



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEYER L PROLER MD & ASSOCIATES
1001 TEXAS AVENUE SUITE 450
HOUSTON TX 77002

Respondent Name

TEXAS MUTUAL INSURANCE CO

Carrier's Austin Representative Box

Box Number 54

MFDR Tracking Number

M4-11-1969-01

MFDR Date Received

JANUARY 27, 2011

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary dated January 26, 2011: "Texas Mutual denied payment for the attached claims because (i) Dr. Proler did not disclose his ownership interest in StatLink Manager and/or (ii) he did not provide the appropriate level of supervision to give him the right to bill for the technical component of the services. As demonstrated above:

1. Dr. Proler had absolutely no obligation under DWC rules to disclose his ownership interest in StatLink because: a. StatLink, a management company, b. As a management company StatLink provides no health care services and is not a health care provider; and c. Dr. Proler refers no patients to StatLink.
2. The use of the real time, visual and audio telemedicine technology allows Dr. Proler to supervise the technician providing the technical portion of the IOM EMG services as if he were in the same room with the technician and surgical team, thereby meeting the requirement for direct supervision required by the DWC rules.
3. Physician supervision of technicians assisting in the performance of EMGs furnished as part of a remote IOM procedure provided through the use of telemedicine technology is accepted by Medicare and virtually every commercial payor."

Requestor's Supplemental Position Summary dated April 1, 2011: "In those original appeals and communications with Texas Mutual, StatLink/Proler attempted to explain to Texas Mutual that Diagnostic EMGs and IOM/EMGs are separate and distinct procedures that are coded and paid differently, and are furnished for different purposes. These attempts to clarify the distinctions between the two types of procedures was apparently unsuccessfully as Texas Mutual continues to treat office-based Diagnostic EMGs and IOM/EMGs performed through the use of live, interactive technology ('telemedicine') during a surgical procedure as one and the same procedure. The difference in these procedures is found not only in the site of service, the types of provider furnishing the service, the purpose of the procedure, the credentialing required for the providers, but also in how the procedures are coded. IOM/EMGs are coded with AMA CPT 95920 whereas Diagnostic EMGs are coded with CPT 95860-95872." "Texas Mutual's classification of StatLink as a health care provider is important because Dr. Proler owns 50% of StatLink. If StatLink were actually a health care provider, this ownership by Dr. Proler would trigger a notification obligation by Dr. Proler, which was admittedly not made." "The Texas Labor Code §401.00(22) clearly and succinctly defines a health care provider as '*a health care facility or health care practitioner.*' StatLink is clearly not a facility. Therefore, StatLink would have to qualify as a '*health care practitioner*' to be considered a health care provider. The same section of the Texas Labor Code defines health care practitioner as '*an individual who is licensed to provide or render and provider or renders health care*'. StatLink does not hold and is not eligible for any State license and thus none of its three legally distinct corporate entities is an individual licensed to provide and render health care." "Dr. Proler has no disclosure obligation with respect to these contracted technicians because he does not refer patients to them. The technicians whose services are billed by Dr. Proler are certified neurological intraoperative monitoring technicians ('CNIMs'), and are

not permitted by their certification to provide independent, unsupervised health care services to patients.” “All physicians have some sort of compensation arrangement with the nurses and technicians who work in the offices...yet Texas Mutual is expecting Dr. Proler to disclose the fact that he pays these CNIMs to assist him with the IOM/EMG procedures. Clearly that is not what the DWC intended by this rule and Texas Mutual should not have denied payment on that basis.” “...these CNIMs are directly supervised by Dr. Proler with the aid of interactive telemedicine technology, and Dr. Proler complied with the Texas telemedicine rules when supervising the CNIMs and furnishing the ION/EMG services.” “Texas Mutual states that Dr. Proler paid refunds on certain cases upon receipt of Texas Mutual's demand letter in January 2010...StatLink/Proler had attempted to get some clarification from Texas Mutual on the reason for the demand, but when they were unable to get clarification from Texas Mutual, they made a business decision to respond to the demand letter...StatLink did not agree with the reason for Texas Mutual's denial, at that or any other time.”

Requestor's Supplemental Position Summary dated August 14, 2012: “As of today, no payment has been received by our office for the above noted claim.”

Amount in Dispute: \$524.71

RESPONDENT'S POSITION SUMMARY

Respondent's Supplemental Position Summary dated March 11, 2011: “Texas Mutual Insurance Company requests this dispute be dismissed because it is processing a manual appeal of the services in question and will issue payment within a week. Texas Mutual will forward proof of payment for your records.

Respondent's Supplemental Position Summary dated March 21, 2011: “Attached please find a copy of check number 10635574 in the amount of \$566.42, which was sent to Dr. Proler office on Friday, March 18, 2011. As noted in the carrier's statement filed on March 11 (copy attached), Texas Mutual has issued payment for the services in question.”

Response Submitted by: Texas Mutual Insurance Co., 6210 East Highway 290, Austin, TX 78723-1098

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 12, 2010	CPT Code 95920-26 (1) - Intraoperative neurophysiology testing, per hour (List separately in addition to code for primary procedure)	\$161.33	\$161.33
	CPT Code 95822-26 (1)- Electroencephalogram (EEG); recording in coma or sleep only	\$81.77	\$81.77
	CPT Code 95925-26 (1) - Short-latency somatosensory evoked potential study, stimulation of any/all peripheral nerves or skin sites, recording from the central nervous system; in upper limbs	\$40.79	\$40.79
	CPT Code 95926-26 (1)- Short-latency somatosensory evoked potential study, stimulation of any/all peripheral nerves or skin sites, recording from the central nervous system; in lower limbs	\$41.52	\$41.52
	CPT Code 95904-26 (4) - Nerve conduction, amplitude and latency/velocity study, each nerve; sensory	\$106.04	\$106.04
	CPT Code 95861-26 - Needle electromyography; 2 extremities with or without related paraspinal areas	\$119.77	\$119.77
TOTAL		\$524.71	\$524.71

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307, effective May 25, 2008, sets out the procedures for resolving a

medical fee dispute.

2. 28 Texas Administrative Code §134.203, effective March 1, 2008, sets the reimbursement guidelines for the disputed service.
3. Texas Labor Code §401.011, effective September 1, 2009 defines a health care provider.
4. 28 Texas Administrative Code §180.24 effective March 14, 2002, sets out the financial disclosure requirements and penalties for healthcare providers.
5. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated June 9, 2010

- Documentation indicates services were provided in an inpatient setting.
- Per Rule 180.24, financial disclosure not met.
- CAC-W1-Workers compensation state fee schedule adjustment.
- CAC-16-Claim/service lacks information which is needed for adjudication. At least one remark code must be provided (May be comprised of either the remittance advice remark code or NCPDP reject reason code).
- 225-The submitted documentation does not support the service being billed. We will re-evaluate this upon receipt of clarifying information.
- 892-Denied in accordance with DWC rules and/or medical fee guideline.

Explanation of benefits March 18, 2011

- CAC-W1-Workers compensation state fee schedule adjustment.
- 790-This charge was reimbursed in accordance to the Texas medical fee guideline.

Issues

1. Is the requestor entitled to reimbursement for CPT codes 95920-26, 95822-26, 95925-26, 95904-26, 95926-26 and 95861-26?

Findings

1. The respondent states in the position summary that "Attached please find a copy of check number 10635574 in the amount of \$566.42, which was sent to Dr. Proler office on Friday, March 18, 2011. As noted in the carrier's statement filed on March 11 (copy attached), Texas Mutual has issued payment for the services in question".

The requestor's representative, Dana Capocaccia, verified on August 14, 2012 that the services remained unpaid and in dispute; therefore, the disputed services will be reviewed per applicable Division rules and guidelines.

28 Texas Administrative Code §134.203(b) states "For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules."

28 Texas Administrative Code §134.203(c)(1) states, "...To determine to MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications...For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$53.68..."

To determine the MAR the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) X Participating Amount = Maximum Allowable Reimbursement (MAR).

Review of Box 32 on the submitted CMS-1500s indicates a zip code 77002. This zip code is located in Harris County. The Medicare conversion factor for Harris County is 36.8729.

The 2010 DWC conversion factor for this service is 54.32.

The Medicare participating amount for code 95920-26 in Harris County is \$109.51. Therefore, the MAR is \$161.33; this amount is recommended for reimbursement.

The Medicare participating amount for code 95822-26 in Harris County is \$55.51. Therefore, the MAR is \$81.77, this amount is recommended for reimbursement.

The Medicare participating amount for code 95925-26 in Harris County is \$27.69. Therefore, the MAR is \$40.79, this amount is recommended for reimbursement.

The Medicare participating amount for code 95926-26 in Harris County is \$28.19. Therefore, the MAR is \$41.52, this amount is recommended for reimbursement.

The Medicare participating amount for code 95904-26 in Harris County is \$18.00. Therefore, the MAR is \$26.51. The requestor billed for four units for a total of \$106.04, this amount is recommended for reimbursement.

The Medicare participating amount for code 95861-26 in Harris County is \$81.30. Therefore, the MAR is \$119.77, this amount is recommended for reimbursement

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$524.71.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$524.71 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

_____	_____	8/16/2012
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.